

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

74-1752

B P/S

UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT, POLEY SQUARE, NEW YORK, N.Y.

.....
JAMES L. DILLARD,
Plaintiff-Appellant

Index No. 74- 1752

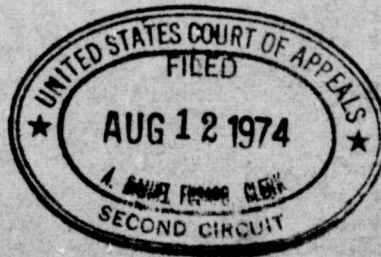
-Against-

ANNABELLE B. DILLARD,
DIRECTOR, MR. GLANTZ, AND
MR. ANTHONY FABISZEWSKI OF THE IN-
TERNAL REVENUE SERVICE,
HON. JUDGE FLORENCE M. KELLEY ADM.
JUDGE OF THE FAMILY COURTS IN THE
CITY OF NEW YORK,
Defendants-Appellees
.....

BRIEF TO APPEAL

AND
APPENDIX

IN A MATTER APPEALING FROM A DECISION OF THE
UNITED STATES DISTRICT COURT OF THE EASTERN DISTRICT OF
NEW YORK BY JUDGE JOHN R. BARTELS. THE PLAINTIFF HAD
DEMANDED A JURY TRIAL IN SUMMONS AND COMPLAINT BOTH
SERVED TO GETHER.



Pagination as in original copy

UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT, FOLEY SQUARE, NEW YORK, N.Y. COPY OF THE WITHIN PAPER

RECEIVED

DEPARTMENT OF LAW

AUG 12 1974

NEW YORK CITY OFFICE

BARTELS
ATTORNEY GENERAL

IN A MATTER APPEALING FROM A DECISION OF
THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF
THE STATE OF NEW YORK BY JUDGE HON. JOHN R. BARTELS
MISSING AN ACTION IN THE ABOVE NAMED COURT. THE PLAINTIFF
IN THE DISTRICT COURT ACTION HAD DEMANDED A JURY TRIAL
IN THE SUMMONS AND COMPLAINT BOTH SERVED TOGETHER.

.....

JAMES L. DILLARD,
Plaintiff-Appellant

: Index No 74- 1752

-Against-

Annabelle B. Dillard,
District Director, Mr. Glantz, and
Mr. Anthony Fabiszewski of the In-
ternal Revenue Service.,
Hon. Judge Florence M. Kelley, Adm.
judge of the Family Courts in the
City of New York.

Defendants-Appellees

::

:

:

:

:

:

:

:

:

BRIEF TO APPEAL

.....

RECEIVED
U.S. ATTORNEY
AUG 12 10 27 AM '74
EAST DISTRICT N.Y.
JAMES L. DILLARD

I, JAMES L. DILLARD, plaintiff in this action
in the United States District Court, Eastern District of
the State of New York, appears personally before this court
in the brief herein. I offer the record of the District
Court, exhibits to be submitted herewith, and an oral
argument in support of the cause of the plaintiff pro. Se.
THE FIRST POINT. The plaintiff acknowledges that a motion
was on for dismissal April 5, 1974. The plaintiff alleges
that he had (2) very substantial reasons for not appearing
on that date. #1. The plaintiff received a (decoy) doc-
ument from the Secretary of judge Bartels.

Page #2, Brief to U.S. Court of Appeals

This document was entitled 'Status Report' and within was the statement that all affidavits, motions, etc. was to be presented to and before judge Bartels on the 25th day of April, 1974. The plaintiff received this communication on April 4th, 1974, being the last information received and receiving it prior to the motion of April 5, 1974, therefore the plaintiff considered it a directive cancelling the motion of April, ^{5th} especially because of the language therein, although I had planned to appear any how. #2. On the same date envolved my wife who was sick a few days prior became delerious and had to be taken to Queens General Hospital as an emergency case. My wife was operated on the same morning for intestinal obstruction. she remained in the hospital for (45) forty five days and must return for (2) two additional phases of the operation. IN ADDITIONAL TO THE above two (2) reason April 5th was a Friday and there was no time to notify the court or anyone else of any changes. The plaintiff in the District Court case notified 'Mr. Mims, law Clerk of Judge Bartels of the conditions as soon as possible, I was told,"that the case was disposed of and the judge had dismissed the case as to all defendants" I ALLEGE THAT I WAS NOT PERMITTED STATE MY CASE, ARGUE THE ISSUES. UNDER THE CIRCUMSTANCES AT THE TIME THERE COULD NOT HAVE BEEN A TRIAL EVEN BEFORE A JURY AS HAD BEEN DEMANDED, for the following reasons:

- a. Subpoenas were sent out to various prospective employers for me, Only the Department of Justice respnded and they did not comply as requested.
- b. Subpoena was sent to the U.S. Postal Service requesting the exact reason I was not hired after meeting the minimum requirement, No response.
- c. Subpoena was sent to former judge Peter M. Horn to his last known address, No response.
- d. Two supoenas was delivered to the U.S. Internal Service, one asking for my tax returns for the years 1962 & 63 and th 1972 return of Annabelle B. Dillard a defendant herein. See Exhibits _____

FACTS AN D HISTORY

There would not have ever been any liti-
gations between the plaintiff and his adversaries if the
Family Court had been a little more prudent concerning
it's procedures and the way they were to be applied, this
should have been followed up by an investigation as to
fault and authenticity. From the reading of the minutes of
December 12, 1963, (submitted as Exhibit #1 herein) this
perjured, vague and otherwise irrelevant information should
not have been the basis for a warrant to arrest nor initi-
ate an action in the Family Court, Queens County. On the
12th day of December, 1963 the defendant Annabelle B. Dil-
lard went befor Family Court judge Paul Balsam and obtained
a warrant for my arrest the information used was perjured
and withhout a probable cause. (THIS VIOLATED THE 4th A
MENDMENT OF THE U.S. CONSTITUTION) The court did ask if I
stayed at home, she said, "he comes in a couple hours at
night", when she really knew I was working two (2) jobs.

Page #4, Brief to the U.S. Court of Appeals.

She told the court I was going to get my uniform allowance (\$125.00) and use to take a girl friend to Florida. (At this time she was sworn and repeated the same information.) See- Exhibit #1, page #3. She told the court she never saw me earlier in the same day she said I told her the garbage about the girl friend. On page #5 of this same exhibit she told the judge I worked the steady night shift. She was asked from midnight to when, she responded by saying I'm a cardiac. Remember she purportedly came to court because I told her the day before, December 11, 1963 I told her I had a girl friend and that this was why she came to court. At the bottom of page #5 of this same exhibit said she came to the court weeks before and was given an appointment for the (30th) thirtieth. I ALLEGE THAT HER HIRING A LAWYER TO GET SUPPORT KNOWING THAT THE COURT HAD ALWAYS FURNISHED HER WITH A LAWYER. Her attorney Mr William Bernstein called me and told me he had been hired by my wife to obtain a legal separation and/or a divorce. Thus- I ALLEGE THAT THE ACTION OF MRS ANNABELLE DILLARD DID INDICATE THAT SHE WANTED TO END HER MARRIAGE Mr. Bernstein suborned the information to get the warrant for my arrest. (I SHALL RESTATE THAT WARRANT VIOLATED THE (4th) AMENDMENT OF THE U.S. CONSTITUTION BECAUSE IT WAS WITHOUT A PROBABLE CAUSE.

Page #5, Brief to the U.S. Court of Appeals.

On the date of December 12, 1963 I picked up my wife from her job and drove her home, we had not been feuding and nothing was said of a warrant. I slept with her that night she arose early the next morning called the police and executed the warrant. I was taken away in handcuffs. I was booked and taken to the Family Court where I nor my lawyer who had now arrived were permitted to say (2) two words and that was 'no sir' to the judge twice. ^I ~~WAS~~ WAS AUTOMATICALLY was presumed guilty without a chance to refute the charges nor cross examine my accuser. (THIS VIOLATED THE (4th) AMENDMENT OF THE U.S. CONSTITUTION.) This was an illegal arrest, which has led to the lost of my long time employment and and has also prevented me from getting suitable replacement employment. This action also led to a controversy with the Internal Revenue Service which is one of the issues of this appeal.

THEREFORE I ALLEGE THAT TRIABLE ISSUE (#1) ONE IS THE WARRANT WITHOUT A PROBABLE CAUSE AND THE ILLEG- ARREST THAT FOLLOWED. involving the Family Court, Annabelle B. Dillard and others.

I further allege that triable issue #2 is that the INTERNAL REVENUE SERVICE, MR. GLANTZ, AND MR. ANTHONY FABISZEWSKI COMPOUNDED THE CHARGE ALREADY MADE AGAINST THE FAMILY COURT- INVOLUNTARY SERVITUDE, which to me meant I was working without a just compensation.

Page #6, Brief to U.S. Court of Appeals.

Under the Family Court Act I had to work or go to jail.
(THIS VIOLATED THE THE THIRTEENTH AMENDMENT OF THE U.S.
CONSTITUTION.)

NOW FOR MY REASONS I ALLEGE THAT THE FAMILY
COURT ACT IS UNCONSTITUTIONAL:

1. Section 115 gives the Family Court jurisdiction over support cases- THIS WAS NEVER REALLY A SUPPORT CASE. (No testimony was wver taken that would prove it to be prima-facia case.) See Exhibits 1-2-3

Section 155, ARRESSTED ADULT

There was never a reason to arrest me, my wife and I had been parties to actions before in the Family Court, Queens County and at all other times I appeared upon receipt of a letter or a telephone call. (I ALLEGE THAT THIS ARREST WAS DONE WITH MALICE AND WITH INTENTION TO DO THE HARM THAT FOLLOWED.)

Section 229, Cooperation of Employer.
My employer over did this request, they joined the conspiracy.

Section 412, Duty to support.

I have always recognized this duty and I always did according to my ability. (THIS IS A PRIVATE DUTY AND I ALLEGE THAT IT SHOULD BE VOLUNTARY.)

Page #7, Brief to U.S. Court of Appeals.

Section 413, Violation of order to support.

I never violated an order of support, the support money was deducted by the City Comptroller before I received the remainder.

Section 422, Person who may originate a proceeding in the Family Court.

I am challenging this section as being unconstitutional because of being UNILATERALLY APPLIED AND IT DISCRIMINATES AGAINST MALE RESPONDENTS IN THE FAMILY COURTS. Thus-Discrimination by sex.

Section 423 Petition on information and belief.

I challenge this section because it permits and allows male respondents to be incarcerated without a probable cause.

Section 437, Presumption of sufficient means

This section is unfair and unconstitutional whether at a hearing or not, without actual proof of means. I allege that as in the instance case I was a public employee with a fixed salary, many heavy indebtedness that was current and up to date. Thus- Since the court audited my records and did not present any evidence contrary to my contention. The court should not have interfered. (See- the minutes of Feb. 20, 1964 -#3.)

Section, 835, Confidentiality of information of the Family Court.

THIS IS THE MOST IMPORTANT SECTION VIOLATED ---THE FAMILY COURT GAVE MY EMPLOYER INFORMATION THAT WAS USED TO DIS---

Page #8, Brief to the U.S. Court of Appeals.

The plaintiff-Appellant tried in many litigations to right a wrong done and by the Family Court, Queens County. For many of those years I only wanted them off my back, not civil relief. In an action or Family Court hearing on September 1, 1966 probation Sarah A. Jacoby testified that it was the concern of judge Kelley that I had to be stopped from writing people in high office----SO NOT AS IN THE WATERGATE MATTER JUDGE KELLEY CANNOT SAY SHE DID NOT KNOW OF THE PLIGHT OF JAMES L. DILLARD. See Exhibit # _____ page # ____ To this omission of duty to carry out the provision of the constitutions of the State and of the United States judge Kelley violated the oath of her office. (ALL JUDGES IN THIS COUNTRY ARE SWORN TO UPHOLD THE CONSTITUTION OF STATE IN WHICH THEY LIVE AND THAT OF THE UNITED STATES.)

THE TRANSIT AUTHORITY PLAYED A BIG PART IN THIS CONSPIRACY ALTHOUGH NOT A DEFENDANT TO THIS ACTION. They were to take away my employment so that I could not bring a suit in law against the Family Court, they knew I did not have ^{MONEY} for an attorney.

My wife thought she had made a big financial sweep until the Internal Revenue designated the funds received from me as income to her. She would not accept this per, se. She went to the Internal Revenue and claimed I made all sorts of money as a contractor etc.

Page #9, Brief to the U.S. Court of Appeals.

A 'Mr Glantz was assigned to audit my records. I told Mr. Glantz I did not have all of the records that should be in my possession. I explained to him that in December, 1963 I was arrested by the Family Court and ordered not within a block of the house owned by my wife and me. He accepted information from my wife and refused to accept my information.-----THIS IS WHY SUBPOENAED FROM THE INTERNAL REVENUE SERVICE A COPY OF MY ~~XXX~~ 1962 and 1963 Had they complied and a trial permitted I would have been able to show that I had the same job owned the same property in 1962 and paid no taxes. Nevertheless I was assessed by Mr Glantz for \$1,800.00. which Mr. Anthony Fabiszewski sequestered from my employer, this made me a real pauper. See. Exhibit # _____

I could go on and on for page after page and it would only show that I was not treated as my fellowmaen of thw same status and condition. My constitutional rights were violated several times over. The judicial process broke down in favor of hhe political process.

I allege that this was the fact all the way to the (9) Great men on the Supreme Court of the United States. My case reached that great court three times and basicly the issue was the same, at least I know the damages were the same and they systematically refused to act. When my reaction to this kind of justice made me send telegrams to men in high offices I was investigated by the F.B. I,

Page # 10, Brief to U.S. Court of Appeals.

U.S. Secret Service, and the New York State Police Dept. none of this has changed my mind. What I will have to do eventually must be done. Since i am no fool I shall first in my own mind attempt all means of settlement. To add to what was said on page #3, supra concerning the facts involving the parties to this appeal --FATHER TIME AND THE ALMIGHTY GOD ABOVE-US HAS A WAY OF SETTling THINGS THROUGH NATURE. In 1963 my wife went to the Family Court, Queens County and claimed abandoment in which members of the court changed into 'Child Support' This was after as 11-legal arrest. MY CHILDREN LIVED BETTER AT THAT TIME THAN ANY TIME SINCE OR BEFORE. My wife (2) months before the date of the arrest hired a lawyer who called me and asked me to come to his office, I refused. After reading early pages of Exhibit # 1, (minutes of Dec. 12, 1963 in the family court. The vaguedness, poorly constructed, and perjured information which could never be porved tends to show that my wife intended to end her marriage to me.

I allege that Annabelle B. Dillard cfeated fake charges of non-support to gain a financial advantage over her husband. AS I mentioned above GOD has his hands on the pendulum of the clock of time, the hands have been turned back to the point it read UNTRUELY THAT ANNABELLE B. DILLARD AND FAMILY NEEDS HELP. This time it is 'REAL'

On April 5, 1974 she was operated on at the Queens General Hospital for intestinal obstruction. The doctor has said she will be disabled many months, probably permanent. The results of the 1963 charge which was never accepted by the plaintiff herein has escalated into approximately (50) fifty hearing, motions, affidavits and appeals, (3) three to the U.S. ~~EMM~~ Supreme Court, and including this appeal. All litigations of the plaintiff-Appellant have been to right a wrong.

On June 17, 1974 I'm to appear in the Family Court, Queens County on the purportedly charges of non-support this time it going to be a joke. I lost my employment because of the first action and my defense thereof. I could not find replacement employment for more than (5) five years. "I REFUSE TO WORK AT ANY KIND OF WORK, ESPECIALLY THAT NOT OF MY CHOOSING" No one cared if I had a job to support myself for the last (5) five years, now, I know I'm going to be told i'll have find work to support another. When and if this shall happen I shall take the exception along with the consequences. I have sworn to my almighty god if the Family Court or any one sequest anything that will make me poorer than I am now this would result in my death and several others.

In conclusion I shall allege that the Family court has ruined the DILLARD family and it has persecuted

and maliciously prosecuted me as if I were an ex-convict.

I want the judges of this court to stop for just one (1) minute and give my conditions a little thought. I had a wife, a job, the State Attorney General, the City Corporation Counsel, and subsequently the U. S. Attorney as opposing litigants most of them at the same time. I have stated previously that I was investigated by the U.S. Secret Service Dept., Federal Bureau of Investigation, and the New York State Police Department the following is all they found::

- a. I am natural born citizen of this country.
- b. I am a disabled veteran of world war #2.
- c. I have been a self supporting tax paying citizen of this country for years.
- d. I have a clean record lifetime.
- e. I had the intellect and I-Q to be selected to attend Army Officer's candidate School although not a high school graduate.
- f. My conduct was good enough to be actively a law enforcement officer in the City of New York until removed without a probable cause.
- g. I have delinquent mortgage payments and other indebtedness of which I can't pay now. My creditors on their own volition only ask of me to do my best we have confidence in you.

-

I have said many things in the above brief, but, it is not my wish to try this case in a brief presented to any court, this only approximately 10% of information that rightfully belong in this action and appeal.

NOW, 'THE STORY' RELEVANT INFORMATION DOWN-PLAYED
BY THE FAMILY COURT AND IT'S COUNSEL THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK. Chronologically reported with
notations:

1. Minutes of the December hearing in which the petitioner was present only. A warrant was issued for my arrest without a probable cause. Note: a. The vague, perjured and otherwise irrelevant information. b. The Court did not investigate the charges before taking my liberty. c. The court did not try to get in touch with me to let me respond and defend against the charges before the warrant was given. d. The warrant and the incarceration that followed was in violation of the 4th Amendment of the U.S. Constitution.
2. On Dec. 13, 1963 I was arrested on a warrant given without a probable cause. I was treated as a felon, taken from my home in hand cuffs etc. Note: a. I was not told previously to appear to defend against charges made against me by my wife, (I HAD APPEARED IN ALL PREVIOUS NOTICES TO APPEAR IN FAMILY COURT USUALLY A LETTER AND SOMETIMES A TELEPHONE CALL.) I was not allowed to bring proof or witnesses that would have cleared me of these perjured charges. b. THIS HARSH INHUMANE TREATMENT CAUSED ME TO BE HOSPITALIZED FROM FEB. 5th THROUGH MAY 29th 1964.
3. Feb. 20, 1964 at the City-Wide Term of the Family Court, 135 East 22nd Street, New York City, the Corporation Counsel 'a Mr. Burt' had the charges changed from abandonment to non-support without submitting proof for same. My Attorney Mr. Wilfred H. Kerr, Esq. did submit information to the Family Court would disprove this although most of the information was objected to by the Corporation Counsel and sustained by the judge, therefore is not a part of the record. Note: a. The information submitted was still enough to refute the charges of the Petitioner to the Family Court. The plaintiff- Appellant herein alleges that from the interrogation the information given by my wife was not knowledge, and not the type of information usually given as information and belief. (NOTHING WAS EVER GIVEN TO BACK-UP HER INFORMATION) b. Mr. Kerr tried by testimony and exhibits from creditors that showed that practically all indebtedness of the family was jointly made.

Page #14, Brief to U.S. Court of Appeals.

Letters from the creditors testified to but not admitted a part of the record in the family court. (WILL BE submitted to this court as Exhibit #_____) shows that the credit was given on the credit rating and record of both James and Annabelle Dillard, thus- equally libel. The Family court violatd my constitutional by interfferring with contracts made in good faith.

4. On March 4th 1965 the petitioner caused a hearing in the Family Court asking for an increase in my payments to her. (Exhibit #_____) This was after all of the damages done to the plaintiff- Appellant herein the provocation had by now caused my second stinct in the U.S. Veteran Hospital. (THE APPELLANT ALLEGES THAT THIS WAS ANOTHER OF THE CRUEL AND IN HUMANE TREATMENT BY THE FAMILY COURT VIOLATING THE (8th) EIGHTH AMENDMENT OF THE U. S. CONSTITUTION.

The Family Court continued to press me for money my wife told them I had hadden and/or was held by my mother or brother. Finally there was a fire in the house located at 216 Reid Avenue, Brooklyn, which was our former home. The Fire did and estimated (\$ 7,000.00) seven thousand dollars damage on Sept. 7/8, 1965 on a Labor Day Holiday. Ther was rental loss and when the insurance was paid we received a little more than # \$ 3, 000.00. The Family Court took the first 1392.00 and gave it to my wife (THIS CAUSED THE HOUSE TO BE CLSOED UNTIL FEB. 1967 when I moved in personally) I had tried to re-open this building in Sept. 1966, but, judge Peter M. Horn of the Family Court had other ideas. He ordered me admitted into the Elmhurst General Hospital for obser- vation on Oct. 3, 1966, this I allege was mainly because my wife had gone to the Internal Revenue Service and told

Page 15, Brief to U.S. Court of Appeals.

them I was hoarding money and that she should not have to pay taxes on the money received from me. She convinced the tax service to audit me which happened at 35 Tillery Street, Brooklyn, New York, ' a Mr Glantz' the auditor. from Mr Glantz's report I was subsequently assessed for \$1,800.00 in delinquent taxes). I paid 100.00 on Mr. Anthony Fabiszewski's insistance with a notation I could pay any more and that the \$100.00 was from a loan made to me by the Paragon Federal Credit Union to consolidate my indebtne~~ss~~s . When I paid no more on the asesment Mr. Fabiszewski sequestered the remainder of my salary. I hired a lawyer to represent me, but, before this could occur, and also because I had told my employer, THE NEW YORK TRANSIT POLICE DEPARTMENT, I could not work for them or any one without compensation. I also gave this same information to the Probation Officer of the Family Court, Mrs Sarah Jacoby. (I ALLEGE THAT THIS WAS THE REASON FOR THE HOSPITALIZING I WAS BEING FORCED TO WORK AS A SL^AVE IN VIOLATION OF THE THIRTEENTH AMENDMENT OF THE U.S. CONSTITUTION.) Prior to this there were no mentioning of illness and I allege that to prove me ill would not have financially helped my wife and family. TO FURTHER COVER-UP AND/OR PREVENT ME FROM MAKING MORE ACCUSATIONS AGAINST THE FAMILY COURT THE FAMILY COURT SOLICITED THE TRANSIT AUTHORITY, HOUSING ADMINISTRATION OF

Page #16, Brief, U.S. Court of Appeals.

THE CITY OF NEW YORK, BROOKLYN UNION GAS COMPANY, A BROOKLYN POVERTY AGENCY - THE BEDFORD STUYVESANT YOUTH IN ACTION, AND (2) INDIGENT TENANTS. who were to take the property from me under a city law which permits this when the landlord doesnot keep his property ~~in~~ repair. I had to fild a summons and complaint against all adversairies including the City of New York. (This action is still pending I shall not say any thing other than submit a copy of the Summons and complaint as an exhibit #_____ I don't want to predjudice the case here. --- In additional to the mentioned the HDA sent letters tenants in another building and me that they were going to place rent control on the premeses they did not have the necessary information and was asking these tenents to stay home so that they might make an ⁿ inspection, the tenants refused. The things used to attack me was unfortunately as they say in 'Base Ball' a pitch in my power alley. I had been a small contractor specializing in the ~~the~~ removal of violation in multiple dwelling and small alterations.

Now in this action that brought on this appeal I shall have to restate that the action or conduct of Mr. Glantz and Mr. Fabiszewski actually did great harm to me as pointed out in the complaint. It is second only to the act of Judge Horn in committing me into the Elmhurst hospital because their action ignited acts of completing

Page #17, Brief to U.S. Court of Appeals.

Povertrizing of James L. Dillard. because I had been getting poorer each day because of what my wife and the Family Court was doing to me. I HAD CHALLENGED THE WHOLE THING BY WORKING A SECOND JOB ETC., this did not work because when and if my wife found out I made extra money I had to give it up. (Resulting into a condition I could not stand-for.-- I could not control or disperse the money I earned.) THIS VIOLATED THE DUE PROCESS CLAUSE OF THE 14th Amendment of the u.S. Constitution making me a different kind of man, a slave.

Now for a consolidated conclusion for the designation of this action as a class action are as follows: THIS COURT IS HEREBY ASKED TO CERTIFY:

1. Does the fact that the Family Court doesnot give cognizant to male respondents discriminates against men.
2. The fact the Family Court does not permit males to file a petition against his wife regardless of her conduct etc. (The appellant alleges that denies due process of law-- 'further alleges that the constitution separate citizens by gender, sex or color.)
3. Does the Sections mentioned by the appellant in this brief pages 6 & 7 supra further show violation of the 14th amendment which states as follows 'No state shall make or enforce any that violates the life, liberty and property of it's citizens. Please answer this question especially as it applies to the instant case.
4. Please certify if the causeing the lost of employment which would normally be the source for support an adequate remedy to the complaint and petition made to the Family. (THE APPELLANT ALLEGES THAT THE PROCEDURES USED IN THIS CASE WAS TAINTED ALL THE WAY.

Page #18, Brief to U.S. Court of Appeals.

WHEREFORE, I, JAMES L. DILLARD, plaintiff-Appellant in the herein appeal comes before this great court appearing personally, TO STATE THAT MY FIRST PRAYER IS TO HAVE A DAY IN COURT AND CHARGE THEM BEFORE A JURY, regardless of the outcome. and/or a directed verdict for the plaintiff-Appellant and against my adversaries or any other remedy or relief proper and fit.

Yours etc.;

James L. Dillard
JAMES L. DILLARD, Pro. Se.
216 Reid Avenue,
Brooklyn, New York 11221
Tel. No. 464-9498

VERIFICATION:

I, JAMES L. DILLARD, plaintiff herein being sworn according to law, deposes and says that I am the writer of this brief and I know the information within to be true to the best of my knowledge, and the other information I allege this to be true on information and belief.

James L. Dillard
JAMES L. DILLARD, Pro. Se.

P.S. AN AFFIDAVIT AND APPENDIX WILL SUBMITTED HEREWITH.

ALSO AN INDEX TO THE EXHIBITS. jld

**SIGNED & SWORN BEFORE
ME this 26 day of JUNE,
1974**

RICHARD A. BIRNBAUM
Notary Public, State of New York
No. 24-5325590
Qualified in Kings County
Commission Expires March 30, 1978

Richard A. Birnbaum

730 1072

DOCKET

1973, 1.

TITLE OF CASE

JAMES L. DILLARD

-agaisnt-

ANNABELLE B. DILLARD,

DISTRICT DIRECTOR, INTERNAL REVENUE SERVICE,

ANTHONY FABISZEWSKI, Revenue Officer, and

MR. GLANTZ, Auditor,

HON. FLORENCE M. KELLY, Administrative

Judge of the Family Courts in the

Five Counties in the City of New York

SIS OF ACTION: CIVIL RIGHTS

RELATES: 72 C 569

RY TRIAL CLAIMED

ATTORNEYS

For Plaintiff: James Dillard/Pro

Se 216 Reid Ave.

Brooklyn, N.Y. 11221

464-9498

For Defendant: For KELLY:

LOUIS LEFKOWITZ

Capitol, Albany, N.Y.

12224, 488-3394

| DATE | PLAINTIFF'S ACCOUNT | RECEIVED | DISBURSED | DATE | DEFENDANT'S ACCOUNT | RECEIVED | DISBURSED |
|------|---------------------|----------|-----------|------|---------------------|----------|-----------|
| 9-73 | Complaint | NO FEE | | | | | |

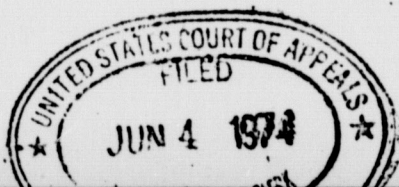
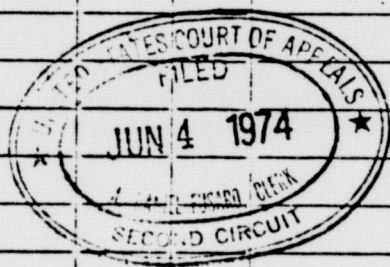
74-1752

ABSTRACT OF COSTS

TO WHOM DUE

AMOUNT

RECEIPTS, REMARKS, ETC.



By:

MARC MILLER

DEPUTY CLERK

Marc Miller

630 1872

JAMES L. DILLARD v. ANNABELLE B. DILLARD ET AL.

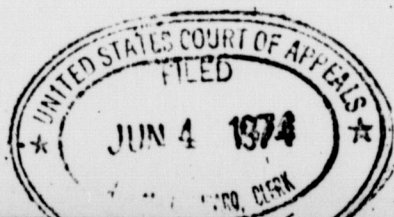
| DATE | FILINGS—PROCEEDINGS | AMOUNT REPORTED IN EMOLUMENT RETURNS | |
|-------|---|---|-----|
| 10-73 | Complaint filed. Summons issued. | 1 | JS5 |
| 10-73 | By BARTELS, J.--Order dtd 12-18-73 allowing plttf to proceed without prepayment of fees filed. | 2 | |
| 10-73 | Letter dated 12/27/73 filed from Sol Marks to Mr Dillard | 3 | |
| 1-74 | Copy of letter from Nina Rao Cameron dtd 1-4-74 filed. | 4 | |
| 1-74 | Letter dtd. 1-19-74 from James L. Dillard to U.S. Dept. of Justice, Immigration & Naturalization Service filed. | 5 | |
| 1-74 | Summons returned & filed/Executed. | 6 | |
| 6/74 | ANSWER of deft Kelly filed. | 7 | |
| 10-74 | Copy of letter from plttf dtd 1-19-74 filed. | 8 | |
| 11-74 | Motion to dismiss complaint filed. | 9 | |
| /74 | By BARTELS, J.- Order dated 2/28/74 filed that the U.S. has until 2/26/74 to file an answer to the complaint. | 10 | |
| 12-74 | Plttf's opposition motion to motions to dismiss filed. | 11 | |
| 15-74 | Copy of letter from Cyril Hyman to Robert S. Hammer dtd 3-15-74 filed. | 12 | |

| | | | |
|------|--|----|-----|
| 8-74 | Letter dtd. 3-15-74 copy from Cyril Hyman to James Dillard filed 13 | | |
| 5-74 | Before BARTELS, J. - Case called. Pltff not present. Deft's motions to dismiss granted. Complaint is dismissed as to all defts. Decision dictated on record. Settle order. | | |
| /74 | By BARTELS, J. - Order dated 4/8/74 filed dismissing the action in this case. P.C mailed to the attvs. | 14 | 556 |
| /74 | Stenographer's transcript of 4/5/74 filed. | 15 | |
| /74 | Letter from James L. Dillard dtd 4-11-74 filed. | 16 | |
| 0-74 | Notice of appeal filed. In | 17 | |
| 0-74 | Record on appeal certified and mailed to C of A. | | |

A TRUE COPY ATTEST
 5/4/74
 CLERK
 LEWIS GAGEL
 BY *Marc Miller*
 DEPUTY CLERK

CLERK

By: MARC MILLER *Marc Miller*
 DEPUTY CLERK



Re. 6/1/74

2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

4 -----X
5 JAMES L. DILLARD, :

6 Plaintiff, :

7 -against- :

73-C-1872

8 ANNABELLE B. DILLARD, :

9 COMMISSIONER U.S. INTERNAL REVENUE

SERVICE, Revenue Officer, ANTHONY J. :

FABISZEWSKI, and Auditor, MR. ...GLANTZ

10 FLORENCE M. KELLY, Administrative :

Judge of the Family Courts in the (5)

11 counties of New York City, :

12 Defendants. :

13 -----X

14
15 United States Court House
16 Brooklyn, New York

17 April 5, 1974
11:30 o'clock a.m.

18
19 B e f o r e :

20 HON. JOHN R. BARTELS,

21 SENIOR, U.S.D.J.

22
23
24 GENE RUDOLPH
25 OFFICIAL COURT REPORTER

A p p e a r a n c e s :

GERALD MILLER, ESQ.
Attorney for Tax Division,
Department of Justice

LOUIS J. LEFKOWITZ
Attorney General of the State of New York

By: ROBERT S. HAMMER
Assistant Attorney General
Attorney for Defendant Kelly
2 World Trade Center
New York, N.Y. 10047

* * *

1
2 THE COURT: The plaintiff, James L.
3 Dillard, appearing pro se, has brought this
4 action against the District Director of the
5 Internal Revenue, Anthony Fabiszewski, a
6 Revenue Officer, Nathaniel Glantz, a former
7 Revenue Officer, Annabelle Dillard, the
8 plaintiff's estranged wife and Florence M.
9 Kelly, Administrative Judge of the Family
10 Court of the City of New York.

11 Now, this complaint is a rambling
12 and disjointed document, but it appears that
13 as to the Internal Revenue Service defendant,
14 the plaintiff's sole complaint is that they
15 did not force or it did not force his wife
16 to file a joint income tax with him, in
17 accordance with the joint income tax form for
18 the year of 1972.

19 We find no basis whatsoever for any
20 jurisdiction over a suit in this court against
21 the Administrative Judge of the New York City
22 Family Court.

23 The Internal Revenue Service defendants
24 have filed a motion to dismiss on the ground
25 that the plaintiff's complaint fails to allege

jurisdiction. They seek a declaratory judgment with respect to federal taxes, and they also state that the complaint fails to state a claim for which really may be granted pursuant to the Federal Rules of Civil Procedure, 12(b)(6).

Now, a complaint, even though it is a pro se complaint, must be dismissed where no cause of action is alleged. Section 6013 of the Internal Revenue Code of 1954, at 26 U.S.C., Section 6013 (a) permits spouses to file joint returns, but the consent of both spouses is necessary for such a filing. Moore versus United States, 37 F. Supp., 136, cert. denied, 314 U.S. 619. That is 1941. Federbush versus Commissioner of Internal Revenue, 325 F.2d, 1, 2d Circuit, 1963. The Internal Revenue Service defendants are without authority to compel a husband and wife to file a joint income tax return. Plaintiff has therefore failed to state a claim against these defendants for which any relief can be granted.

As indicated above, this court has no jurisdiction for any claim against the Family

1
2 Court.

3 Plaintiff also failed to appear this
4 morning.

5 The complaint is dismissed on the
6 merits and also by reason of the plaintiff's
7 default.

8 So ordered.

9
10 * * *
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

